IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 1 of 2003
With
COMPANY PETITION No. 325 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BOARD OPINION - Petitioner(s)
Versus
M/S.JALAN FORGINGS LTD. & 7 - Respondent(s)

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Appearance :
BOARD OPINION for Petitioner(s) : 1,
SERVED BY AFFIX.(N) for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) : 3,6 - 8.
MR HS MUNSHAW for Respondent(s) : 4,
MR RD DAVE for Respondent(s) : 5,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 06/03/2006

ORAL JUDGMENT

Company Petition No. 1 of 2003 arises from the Opinion dated 1.11.2002 provided by Registrar of

BIFR in Case No. 131 of 1998 based on Minutes of proceedings dated 31.10.2002 before the BIFR. The BIFR has recommended that it is just and equitable in public interest that M/s. Jalan Forgings Ltd ['JFC'] should be wound up under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as “the Act”).

2. Company Petition No. 325 of 1999 is filed by one of the creditors for winding up of the respondent Company, i.e., JFL.

3. The petition was admitted by this Court by order dated 11.8.2003. The respondent company was ordered to be advertised in 'The Indian Express' of Baroda edition and Loksatta/Jansatta [Gujarati] in Vadodara editions and the Official Liquidator was appointed as 'Provisional Liquidator' for the purpose of issuing advertisement by order dated 12.11.2003. Thereafter, these Company Petitions came to be heard by the learned Single Judge of this Court 1.12.2005 and having noted that after advertisement nobody had filed any objection with the Official Liquidator

except lodgment of claim by the Income-tax Department, this Court directed the Official Liquidator who was appointed as 'Provisional Liquidator' to enter into the property of the Company and take possession of the same and to submit a compliance report within 8 weeks. That thereafter the Official Liquidator has submitted his Report and has further submitted that he has already taken over possession of the company, i.e., Jalan Forgings Ltd.

4. When the matter is called out for final hearing today, Shri DJ Bhatt, learned advocate appears on behalf of the petitioner company in Company Petition No. 325 of 1999 and Shri Ramnandansingh, learned advocate appears on behalf of respondent Company and the Official Liquidator is present.

5. Having perused the opinion of the BIFR and having heard the above named learned counsel for the parties, it appears to this Court that the BIFR had already given an opportunity to the Company for rehabilitation; the respondent company was declared

as a Sick Industrial Company in terms of Section 3(1)(o) of the Companies Act; the Bank of Baroda was appointed as 'Operating Agency' to examine the viability of the company and formulate a revival scheme; the BIFR noted that despite adequate opportunities having been given to the Company/promoters they had not been able to come out with comprehensive rehabilitation proposal; thereafter the respondent Company submitted the scheme; after giving adequate opportunity, the Bench of the BIFR prima facie opined that the promoters were not serious in rehabilitating the company nor are they resourceful enough to mobilize the funds required for the purpose; and that promoters/Directors of the Company failed to comply with the directions of the Bench. The Bench also further observed that there is no rehabilitation proposal with means of finance fully tied-up for consideration of the Board despite ample opportunities having been given to all concerned. Accordingly the BIFR prima facie opined that the Sick Industrial Company, i.e., M/s. Jalan Forgings Ltd.,

is not likely to make its net worth except its accumulated losses within a reasonable time while meeting its financial obligations and the company as a result thereof is not likely to become viable in future. The Bench of the BIFR therefore opined that it would be just and equitable in public interest that the respondent Company should be wound up under Section 20(1) of the Act.

5.1. In view of the above opinion, the present petition has been registered.

6. No Affidavit-in-Reply has been filed on behalf of respondent No.1, M/s. Jalan Forgings Ltd. The Court, therefore, proceeds on the basis of the findings given by the BIFR which are already quoted hereinabove.

7. In view of the aforesaid uncontroverted findings, this Court accepts the Opinion of the BIFR and therefore passes the following order:

Both these Company Petitions are allowed in view of the Opinion of the BIFR rendered in Case No. 131 of 1998 at the hearing on 31.10.2002. M/s. Jalan Forgings Ltd., is ordered to be wound up in accordance with the provisions of Companies Act, 1956. The Official Liquidator attached to this Court, who is already appointed as 'Provisional Liquidator' of the Company, is appointed as Official Liquidator, and he is directed to proceed further in accordance with the provisions of the Companies Act, 1956. There shall be no order as to costs.

[M.R. Shah, J.]

RMR.